

*Non-native speaker of English:* A person whose first language is not English and who is not fluent in English.

*Secondary school level:* As applied to “content,” “curricula,” or “basic verbal and quantitative skills,” the basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

*Test:* A standardized test, assessment or instrument that has formal protocols on how it is to be administered in order to be valid. These protocols include, for example, the use of parallel, equated forms; testing conditions; time allowed for the test; and standardized scoring. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive instruments that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across retests.

*Test administrator:* An individual who is certified by the test publisher (or the State, in the case of an approved State test or assessment) to administer tests approved under this subpart in accordance with the instructions provided by the test publisher or the State, as applicable, which includes protecting the test and the test results from improper disclosure or release, and who is not compensated on the basis of test outcomes.

*Test item:* A question on a test.

*Test publisher:* An individual, organization, or agency that owns a registered copyright of a test, or has been authorized by the copyright holder to represent the copyright holder’s interests regarding the test.

(Authority: 20 U.S.C. 1091(d))

#### § 668.143 [Reserved]

#### § 668.144 Application for test approval.

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test or by a State.

(b) A test publisher or a State that wishes to have its test approved by the Secretary under this subpart must sub-

mit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in paragraph (c) or (d) of this section, as applicable.

(c) A test publisher must include with its application—

(1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests for which approval is being sought;

(2) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries;

(3) Each edition, form, level, and sub-test of the test for which the test publisher requests approval;

(4) The distribution of test scores for each edition, form, level, or sub-test for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with § 668.147;

(5) Documentation of test development, including a history of the test’s use;

(6) Norming data and other evidence used in determining the distribution of test scores;

(7) Material that defines the content domains addressed by the test;

(8) Documentation of periodic reviews of the content and specifications of the test to ensure that the test reflects secondary school level verbal and quantitative skills;

(9) If a test being submitted is a revision of the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(3) and an analysis of the effects of time on performance. This description may also include the manner in which test-taking time was determined in relation

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to the other requirements in § 668.146(b);

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in § 668.146(b);

(14) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(15) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(16) A description of its test administrator certification process that provides—

(i) How the test publisher will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with this subpart and the test publisher's requirements; and

(ii) How the test publisher will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(17) A description of the test anomaly analysis the test publisher will conduct and submit to the Secretary that includes—

(i) An explanation of how the test publisher will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a certified test administrator) when the test publisher determines that test irregularities have occurred; and

(iii) Information on when and how the test publisher will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that test publisher, that the test administrator has been decertified; and

(18)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities, and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes.

(d) A State must include with its application—

(1) The information necessary for the Secretary to determine that the test the State uses measures a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State;

(2) The passing scores on that test;

(3) Any guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities;

(4) A statement regarding how the test will be kept secure;

(5) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(6) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(7) A description of its test administrator certification process that provides—

(i) How the State will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with the State's requirements; and

(ii) How the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(8) A description of the test anomaly analysis that the State will conduct and submit to the Secretary that includes—

(i) An explanation of how the State will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a test administrator) when the State determines that test irregularities have occurred; and

(iii) Information on when and how the State will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that State, that the test administrator has been decertified;

(9)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities; and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes; and

(10) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries.

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) the manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the State.

Approved by the Office of Management and Budget under control number 1845-0049)

(Authority: 20 U.S.C. 1091(d))

#### § 668.145 Test approval procedures.

(a)(1) When the Secretary receives a complete application from a test publisher or a State, the Secretary selects one or more experts in the field of educational testing and assessment, who possess appropriate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in §§ 668.146, 668.147, 668.148, or 668.149, as appropriate, and to advise the Secretary of their determinations.